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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,283	10/29/2003	Takehira Sengoku	19A 3480	6492
7590	03/15/2005			
Koda & Androlia 2029 Century Park East Suite 1140 Los Angeles, CA 90067-2912				EXAMINER COCKS, JOSIAH C
				ART UNIT 3749
				PAPER NUMBER DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,283	SENGOKU, TAKEHIRA <i>(S)</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Josiah Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 January 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 2 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 2 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/14/2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed 1/11/2005 is acknowledged.

### ***Drawings***

2. The drawings were received on 12/14/2005. These drawings are approved and accepted by the examiner.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 and 2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended claim to recite that the semi-cylinders respectively comprise a plurality of vertical rods and semi-circular horizontal rods which are, at upper and lower ends portions thereof, welded and integrated. However, the specification as originally filed does not recite that the vertical rods and horizontal rods are "welded and integrated." The examiner notes that the specification does state that connecting and fixing tools are welded to upper end portions

of the vertical rods (see specification, p. 2 and p. 5) but not the limitations now appearing in claim 1.

Applicant must remove the material added in the prior amendment from the claims.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 2 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,611,574 to Nakamura et al. ("Nakamura").

Nakamura discloses in Figures 1-8 the invention substantially described in applicant's claims 1 and 2 including a circular heat guard that includes an upper surface guard (18) and a cylindrical main body guard (20) that is considered to be made up of a pair of left and right semi-cylinders. Fixing and connecting tools (30) include the mounting, support, and locking portions with horizontal portions formed by bending elongated portion structures that integrate the upper guard and main body guard as recited in the claims (see col. 5, line 47 through col. 6, line 22 and Figs. 2-4 and 6-8). The locking portions are considered to form the locking spaces and locking clearances as recited.

In regard to claim 1, it has been held that to support a conclusion that a claim is directed to obvious subject matter, prior art references must suggest expressly or impliedly the claimed invention or an Examiner must present a "convincing line of reasoning" as to why one of

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ordinary skill in the art would have found the claimed invention to have been obvious. *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). In doing so, the Examiner may rely on “logic or scientific principle.” *In re Soli*, 317 F.2d 941, 947, 137 USPQ 797, 801 (CCPA 1963). See also MPEP § 2144.02. In the present case, Nakamura discloses that the vertical bars of the main body guard are integrated with top and bottom horizontal bars (see Fig. 1) but does not expressly disclose that these bars are welded. However, at the time the invention was made, it would have been merely an obvious matter of design choice to a person of ordinary skill in the art to modify Nakamura to include welding the bars because Applicant has not disclosed that these limitations provides an advantage, is used for a particular purpose, or solves a stated problem. Furthermore, one of ordinary skill in the art would have expected Applicant’s invention to perform equally well with the joining means shown in Nakamura because these means serve to join the vertical rods to a top and bottom horizontal rod. Therefore, it would have been an obvious matter of design choice to modify Nakamura to obtain the invention specified in claims 1 and 2.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
March 10, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749